

A. G. Contract No. KR892202TRD  
ECS File: IGA-89-121  
Project: YU S0249 01C  
Section: Ave 40E & SPTCRR

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA  
AND  
YUMA COUNTY, ARIZONA

THIS AGREEMENT is entered into 23 February, 1990,  
pursuant to Arizona Revised Statutes, Sections 11-951 through  
11-954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State") and YUMA  
COUNTY, ARIZONA acting by and through its Board of Supervisors  
("County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. County is empowered by Arizona Revised Statutes  
Section 11-251 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has  
authorized the undersigned to execute this agreement on behalf  
of the County.

3. Congress has authorized appropriations for the  
erection of automatic warning signals, automatic gate arms,  
plank crossings, pavement markings, and other appurtenances.

4. Such project within the boundary of the County has  
been selected by the County; the field survey of the project  
has been completed; and the plans, estimates and specifications  
have been prepared and, as required, submitted to the Federal  
Highway Administration ("FHWA") for its approval.

NO.	<u>14547</u>
FILED WITH SECRETARY OF STATE	
Date Filed	<u>2-23-90</u>
	<u>Jim Shumway</u> Secretary of State
By	<u>Patricia E. Hunter</u>

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the County by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The work embraced in this agreement and the estimated cost are as follows:

Furnish and install Flashing Light Signals with Automatic Gates and Timber Plank Crossing Surface:

Furnish & Install Flashing	
Light Signals and Gate (SPTCRR)	= \$108,271.
Preliminary & Const. Engineering	= 4,000.
Work by Yuma County	6,423.
Subtotal	= 118,694.
Federal Aid Funds @ 90%	= 106,825.
AZ Corp. Commission Funds @ 10%	
of \$112,271. (\$118,694 - \$6,423)	= 11,227.
Yuma County Funds @ 10% of \$6,423	= 642.
Two percent surcharge on \$119,332	= 2,165.*
Total Yuma County Funds	\$ 2,807.

\*This includes a 2% surcharge on the total estimated cost as per Chief Deputy State Engineer memo dated 2 FEB 82.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b. The State will furnish the County with a copy of the proposed Project Agreement to be entered into by the State and FHWA and the Railroad Company Agreement necessary for the full completion of this project.

c. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the County's deposit unless and until so authorized in writing by the County.

2. The County shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

3. The County shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom.

4. The County shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the County shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the County.

5. Upon completion of construction, the County shall provide for, at its own cost and as an annual item in its budget, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities) to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The County shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

7. By such regulation as it may by ordinance provide, the County shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

### III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. Local Agency assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of Local Agency and that Local Agency hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, Local Agency, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the work covered by this agreement is to be borne by FHWA and the County, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the County agrees to furnish and provide the State with County funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518(B) and (C).

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Engineering Consultants Services  
205 South 17 Avenue, Room 118E  
Phoenix, AZ 85007

Yuma County Public Works Director  
Box 1112  
Yuma, AZ 85364

9. Attached hereto and incorporated herein is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

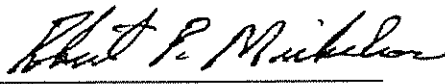
YUMA COUNTY, ARIZONA

STATE OF ARIZONA

Department of Transportation

By 

Title Chairman,  
Yuma County Board of  
Supervisors

By 

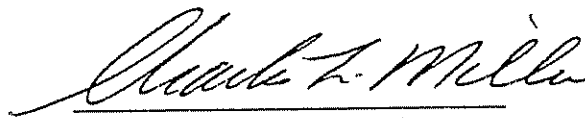
ROBERT P. MICKELSON  
Deputy State Engineer

2259j  
15NOV

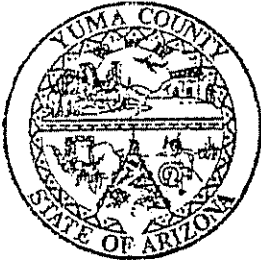
RESOLUTION

BE IT RESOLVED on this 5th day of September 1989, that I, CHARLES L. MILLER, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the County of Yuma for the purpose of defining responsibilities for installing flashing light grade crossing signals with automatic gate arms and timber plank crossing surface at Avenue 40E @ SPTCRR.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.



CHARLES L. MILLER, Director  
Arizona Department of  
Transportation



Yuma County  
Yuma, Arizona

OFFICE OF THE  
BOARD OF SUPERVISORS  
Redondo Square  
P.O. Box 1112  
Yuma, Arizona 85364  
Phone 782-4534

STATE OF ARIZONA )  
COUNTY OF YUMA )

I, James Stahle, Clerk of the Board of Supervisors do hereby certify that I am required by law to maintain custody of the minutes of the Board of Supervisors and that the following is a true and correct copy of a portion of the minutes of the Board of Supervisors meeting held January 8, 1990.

"Upon motion and unanimous vote the Board of Supervisors authorized the Chairman of the Board to enter into an Agreement between the State of Arizona and the County of Yuma covering Railroad Crossing Improvements on Avenue 40E.

In Witness Whereof I have hereunto set my hand and affixed the official Seal of the Board of Supervisors. Done at Yuma, the County Seat, this 8th. day of January, 1990.

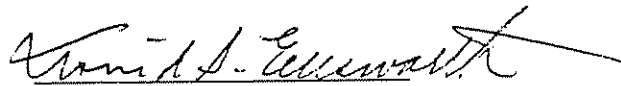
James R. Stahle  
Clerk of the Board of Supervisors

JPA 89-121

APPROVAL OF THE COUNTY ATTORNEY

*I have reviewed the proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the COUNTY OF YUMA and declare this agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona.*

DATED this 29 day of December, 1989.

A handwritten signature in cursive script, appearing to read "Ronald A. Eller", written over a horizontal line.

County Attorney





Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. KR892202TRD, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 16<sup>th</sup> day of February, 1990.

ROBERT K. CORBIN  
Attorney General

A handwritten signature in cursive script, reading "James R. Reynolds".

Assistant Attorney General  
Transportation Division